established country-wide to deal with property problems and which would be linked to the local courts[44].

Kuchis are however by no means the only group facing problems in that regard. In Queshtepa district of Jawzan province, villagers were unable to access to traditional grazing lands in the upper part of Dasht I Laili close to Tragheli, Turkmen Qudoq. Commanders, who wanted to personally benefit from these lands, have illegally cultivated the grazing fields close to the village. Some families therefore had to leave their area looking for new grazing land[45].

K. Weak Dispute Resolution Mechanisms

The role of the provincial and district authorities in settling land-related disputes has been mixed. It would seem that where the cases have involved average returnees or local inhabitants, the authorities were more keen to use their leverage and to push for a solution of the dispute. This was the case in Hazarara Qala Afghania village, Qagar district of Faryab province, where a dispute between a Pashtun returnee and a resident Hazara was reported. Since both sides are not related to any military or commanders, it has been possible for the authorities to intervene on this case effectively. Currently, the police is in control of the land, until a final solution is found[46].

This was generally not the case, once it became evident that one of the parties is influential or can exercise political leverage. This was the case in a village in Almar district of Faryab province, where a commander reportedly captured around 800 jeribs of land of three people by force. The landowners several times complained to the authorities but did not receive any assistance. Other complaints by returnees also centred on the need to pay bribes to the authorities, if they wanted the issue to be seriously resolved-though a resolution could not be guaranteed. In Kunduz province for example, the inhabitants had sent their land disputes and problems to the district authorities. They were generally dissatisfied with the performance of the authorities, citing many instances of corruption[47].

In Qarra Shaikhi village of Faryab province, the Arab inhabitants had been engaged in a dispute with the neighbouring Uzbeks in Sara Qala over pastoral land, which the latter had occupied for arable use, supported by commander Sjara Beg. The Arabs had lodged an official complaint 4 years ago, and their claim was pending in the provincial courts. They explained this delay by alleging that Shara Beg had paid money to the Taliban not to consider the Arab claim[48]. Finally, in the village of Chichactu in Jawzjan province, a returnee who had a personal dispute with two villagers, stated that he had not referred the case to the courts because he believes that the other party is rich and strong and by paying bribes they can win the claim[49].

There is a strong and evident lack of faith in the effectiveness of the existing judicial system. As such, returnees, similar to other Afghans, hardly resort to the local courts when exploring

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[44] Office of the Chief of Mission. Note for the File, Kabul, June 15, 2003, p. 1

[45] Sub-Office Mazar Sherif, Summarized Returnee Monitoring reports, Feb-April 2003, Mazar Sherif, May 2003, p.3.

[46] Sub-Office Mazar, Returnee Monitoring Report: Charsahanba Afghania, Hazara Qala Afghania, Chichactu, Chilgazi sub-districts, Qaisar, May 16th-June 2" Mazar Sherif, June 2003.

[47] Sub-Office Mazar, Compiled Returnee Monitoring Report: Kunduz and Takhar Provinces, Mazar Sherif, December 2002, p.8

[48] Sub-Office Mazar, Mission to Faryab, November 26-December 3rd, 2003, Mazar Sherif, December 2002, p.4.

[49] Sub-Office Mazar, Returnee Monitoring Report: Charsahanba Afghania, Hazara Qala Afghania, Chichactu, Chilgazi sub-districts, Qaisar, May 16th-June 2nd, 2003, Mazar Sherif, June 2003.

solutions to land disputes. The following interview report with a returnee in Qaysar district of Faryab province is rather indicative. The returnee stated that he had 5 jeribs of irrigated land, which had been occupied by a commander from a nearby village during his absence. He apparently did not feel confident enough to reclaim it He said that he did not think as a result that the district judge would give him a fair hearing but that if disarmament took place he would be able to[50].

In the few cases where returnees have accessed the legal channel, they have had to wait for many years before their cases were processed. In Kandahar province, UNHCR was informed that a large number of cases relating to land ownership/occupation registered in the district and the provincial courts have been pending for a long time. Interestingly enough, representatives of the justice system admitted to the various problems they were encountering in fulfilling their duties. In an interview with a member of a court in a province, he stated that the judges were receiving calls from the governor and from other commanders, urging them to take the "appropriate decision" on certain land cases. The pressure they were subjected to was real and substantial, forcing them to deviate or keep cases pending if it was too sensitive.

Even fewer returnees refer their cases to the recently established property court in Kabul. Though the property court is mandated to examine all property issues nation-wide, the president of the court indicated that the number of cases from the provinces was relatively low. Members of the justice department in the provinces confirmed this. For example, according to the administrator of the provincial courts in Maimana, despite the fact that the Supreme Court had sent a letter informing it of the role of the property court, the court did not have an impact on the way disputes were addressed at the provincial level.

Given the lack of faith in the legal channel, the parties continue to largely rely on the informal and tribal dispute resolution mechanisms. Most villages establish councils of representatives or elders, otherwise known as "shuras" in order to tackle various kinds of disputes that arise at the village level. The effectiveness of these informal mechanisms has been mixed, and is also affected by the power structure in the village or district. It has however managed to solve many disputes and conflicts among individuals in a peaceful manner that is acceptable to both parties.In Pir Zada in Ghazni, a returnee while in Pakistan, found out that someone was occupying his house and informed his relatives in his village that he was coming back. He asked the occupier to vacate the premises and was able to recover them immediately without problems.

L. Illegal Occupation of Government Land

This phenomenon is related to the widespread landlessness explored earlier. Given that the majority of the Afghan population is landless, a fair number of them seem to be residing on government land. As one would imagine, their presence is tolerated in some cases and deeply contested in others.

Kandahar City is the site of a controversial application for land allocation filed by a group of IDPs who have occupied government land, and have expressed their interest to resettle there either temporarily or permanently. While these cases cannot be treated as land disputes as such, they raise major concerns with regards to the implementation of a durable solution for the significant population displaced persons in the Region. Initial reports have revealed a sizeable number of IDPs, wish to permanently settle in their current displacement locations in the South-

[50] Sub-Office Mazar, Returnee Monitoring Report: Faryab, Qaysar, June 2-3, 2003, Mazar Sherif, June 2003, p. 5.

western region. The most obvious case in point is that of Zhari Dasht IDP settlement for which currently only a right of use has been granted by the provincial authorities of Kandahar[51].The problems becomes more pronounced in the urban areas, where in addition to occupying government land, returnees and citizens are also occupying government buildings.

As expected, the authorities have reaffirmed their control over public land in some cases, to the detriment of the groups that are residing there, and who often, has no alternative places of residence. In Herat for example, many of the IDPs are currently facing the threat of forced relocation from Shaydeh camp to Maslakh camp because the governor wants to restitute most of the land to the military[52]. In Nangarhar province, the authorities have already demolished the houses of 95 families along the Jalalabad canal, on the pretext that their houses are built on governmental land. A recently created land committee has ordered the demolitions. This is a temporary body whose declared purpose is to preserve government owned land from illegal occupancy. There are strong indications that other areas will be targeted. One of the most likely sites for such an activity is reportedly Farma Hadda Camp, a settlement hosting thousands of Afghans that have come as IDPs from other provinces throughout the various periods of fighting, and have later integrated[53].

A similar scenario is unfolding in Laghman province in the East, where several families have received an expulsion order from the Governor. Though the families claim that this land has been allocated to them under Dawud Shah, the provincial authorities affirm that this land is government land, and that it is illegally occupied by 810 families[54].

M. Inadequate Land Registration System and Conflicting Legislation

Several of these problems have been exacerbated by the improper land registration system. Land ownership records are held by the imlak, which has offices at the provincial level. In Faryab province, it was reported that some Pashtuns villagers who had fled the area during Rasul Pahlawan's reign had sold their land to other villagers. The sale transfers was only written on a piece of white paper and was not officially registered with the district centre. They had returned and claimed that they had not sold their land or done so under duress. The Talibans had supported these Pashtuns in reclaiming their sold land to the detriment of the Arab buyers[55].

As a result, the identification of the real owners in a dispute is a major difficulty, which continues to be the main factor complicating the resolution of the dispute through the legal channel. In Imam Shahi district of Kunduz province, the land ownership is contested between a group of Turkmen pastoralists, who have been grazing animals in this area for many years and hold documents to that effect and a group of 230 Uzbek families, who also own documents that state that the contested land has been granted to them by the authorities around 20 years ago[56].

[51] Sub-Office Kandahar. Regional Returnee Monitoring Report: South-West Region, October 2002-March 2003, Kandahar, April 2003, p. 11.

[52] The Internally Displaced in Afghanistan: Towards Durable Solutions: Report of the Inter-Agency Mission, May 2003, p. 7.

[53] Sub-Office Jalalabad. Bi-Weekly Situation Report, July 21-August 3, 2003, Jalalabad, August, 2003, p. 1-3.

[54] Sub-Office Jalalabad. Bi-Weekly Situation Report, June 23-July 6th, 2003,Jalalabad, June 2003, p. 3.

[55] Sub-Office Mazar, Mission report to Faryab, Mazar Sherif, November 26-December 3rd, 2003, Mazar Sherif, December 2002. p.4

[56] Land Task Force for the Northern Region, Draft 1: Protection Issues Related to Land-Examples of reported cases, March 25th, 2003, p.3

It is also been widely acknowledged, that during the several land registration exercises that took place nation-wide, many land owners did not reveal the real number of jeribs that they owned.

M. Governmental Urbanisation plans and land allocation initiatives

Despite the fact that the government has instated a "freeze" on the distribution of government land, several township plans have been developed at the provincial levels, particularly Jalalabad, Mazar Sherif, Kandahar, and Herat. They intend to benefit only those Afghans who are originally from these provinces, and "a general attitude that seems to prevail is that land will not be distributed to "guests" from other provinces, while there are densely populated districts whose inhabitants are also in need of land[57]".

One of the most prominent examples in that respect is the housing scheme that the Governor of Nangarhar is planning in Gamberi desert. This is a piece of alleged government owned land, that lies in between Nangarhar and Laghman, and constitutes the site of a potential township project that the provincial authorities have been planning for, for some time. It is envisaged that plots of land will be allocated for housing purposes only, and will not be used for irrigation. As such, residing families will continue to have to seek means of livelihood in the cities or neighbouring rural areas[58].

The dominant characteristics in these proposals, is that the beneficiaries are envisaged to be groups of persons that are either ethnically or politically aligned to the power structure in the province, rather than their vulnerability. The provincial authorities have approached the International community and requested them to support these initiatives.

III. Conclusion

UNHCR recognises that land related problems are often one of the most serious issues threatening the stability of Afghanistan, and that the reorganisation of the land tenure system in Afghanistan is a priority that merits the attention of the authorities, international community, and donor governments. It will thus continue to advocate, together with other UN agencies, for prioritising this issue on the national agenda, and for assisting the authorities in identifying the key problems and devising practical and effective solutions.

UNHCR is fully aware that the solution for this problem will take several years at best, and that given the pressing needs of refugees and internally displaced persons wishing to return immediately, there is a need to devise ad hoc and local solutions to these intricate and delicate problems, without however creating facts on the ground that could be damaging to the overall land tenure issue in Afghanistan.

OCM Protection
Kabul, September 1, 2003

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[57] SO Kandahar. SO Kandahar Sitrip 5 July-2 August, 2003, Kandahar, August 2003, p.3.

[58] Sub-Office Jalabad. Land Problems in the context of sustainable repatriation in the Eastern Region, Jalalabad, April 18th, 2003.p. 4.

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UNHCR

External version
Overview of Trends
2003

Land Issues within the Repatriation Process of Afghan Refugees

I. Introduction

Throughout the returnee monitoring exercise conducted countrywide, land related issues were identified as one of the main problems that refugees and IDPs were facing upon return, and that hampered their sustainable reintegration into their societies.

Land problems have affected both individuals and groups alike. Conflicts among individuals and groups can be found in almost every district, serving as a reminder of the seriousness of the problem, and involving a high level of violence and manipulation.

The following case serves as a good illustration of the kind of conflicts found at the local level: A returnee and his neighbour in Khwaja Hakeem village of Ghazni province have had a six year long conflict over access to a garden. The case was particularly complicated by the fact that the dispute had erupted during Taliban rule. The neighbour had allegedly accused the man of having beaten his mother in order to seize his property. After several attempts by the local shuras at solving the dispute, the case eventually came before the local tribunal and has been pending since then.

On the collective level, conflicts between whole tribes and ethnic groups are quite common, often leading to serious instability. In Maiwand district of Kandahar province, interviewees of different Pashtun tribes alleged that their plots of land and property had been occupied by the majority Noorzai tribe. Similarly, a long-lasting dispute over the illegal occupation of agricultural land was reported in Arghistan district of the same province between the Mohamedzai tribe and the Barakzai tribe. Finally, in Khalazai village of Kabul province, which is home to many land disputes between tribes, 200 Pashtoon families have presented various complaints before the local shura and Governor's Office claiming that the Tajiks from the neighboring Rabot village had taken charge of their farms, and are cultivating them illegally[1].

II. Land Problems: Situation and Trends

A. Widespread landlessness

Though UNHCR does not have sufficient information on the scale of landlessness, as it had not been examined closely nor systematically, the issue has been documented in depth by other institutions and experts[2]. It suffices at this point to make special reference to World Food Programme [WFP]'s recently published report. The data contained in it is based on rapid survey carried out in 1,887 villages in 2002[3]. Landlessness varied widely. As many as 68% and 63% of households were landless in respectively Faryab and Jawzjan. Even within a district or province, rates of landlessness vary widely. A recent study of landholding in fifteen villages in Bamyan Province shows that whilst 39 percent of households were landless overall, this ranged from 15 to 86.6 percent by individual village[4]."

[1] Sub-Office Kabul Returnee Monitoring in Kabul, Kapisa, Logar, Parwan, and Wardak Provinces, Kabul, January 2003, p. 21.
[2] See for example, Liz Wiley. Land Rights in Crisis, Afghan Research and Evaluation Unit, Kabul, 2002.
[3] WFP, Afghanistan Countrywide Food Needs Assessment of Rural Settled Populations, 2003.
[4] Liz Alden Wily for AREU (forthcoming) A Review of Land Relations on the Ground: The Case of Bamyan Province.

The little information that was generated through returnee monitoring reports seems to support their conclusion that landlessness is very widespread in Afghanistan. In Kandahar province for example, UNHCR found that only 20% of the region's population hold title over land. The majority of the landless returnees to the region either join relatives who are landowners, gain employment as paid farmers on agricultural land (and are commonly granted accommodation on the same land or are assigned unoccupied property belonging to families who are still in exile for temporary use by an area's local shura[5].

In Ghazni, 30% of the interviewees explained that they had their own agricultural land, the average size being 30 Jeribs. The same is true for the East, where UNHCR has gained an initial idea of the dimension of landlesness through analyzing the reasons for rejecting returnees as beneficiaries to the shelter program that is finances. In doing so, it has found that the number of returnees who fulfil the vulnerability criteria, but who were landless (and therefore excluded from the shelter program on that basis only) amounted to 30% and 60% in some districts in Laghman province. One of the consequences of landlessness is that it has exacerbated the already existing strain on the resources in a particular village[6].

B. Land as a Serious Obstacle to Return

Land related problems and disputes constitute a serious obstacle to return of refugees in exile. Sangshanda village of Parawan province serves as a good example in this respect., Having had an original population of 700 families mainly of Pashtun ethnicity, it was reported that only 30 families returned in 2002 many of whom subsequently left. Interviews with some of the returnees has revealed that the main reasons for this phenomena was the victimisation they had experienced at the hand of the Tajik community, whom they characterised as capable of "doing whatever they wanted"[7].

Given the centrality of land ownership in the process of income generation and sustaining livelihood, it would not be surprising that some Hazara representatives in Puli Khumri district of Baghlan province, who had been involved in land disputes informed UNHCR that they intend to return to Pakistan in the spring of 2003 unless the issue is resolved.

The seriousness of the problem became more evident, once UNHCR launched its "Facilitated Group Return" (FGR) Initiative in April 2003. The objective of this approach was to "identify obstacles to voluntary repatriation and to their solution where possible.[8]" Since then, around 30 groups of refugees from various areas of Afghanistan have approached the office, requesting its assistance in removing the obstacles to their return. Interestingly though, land related problems have featured as the most recurrent obstacle, particularly: Outright landlessness[9]; the inadequacy

[5] Sub-Office Kandahar. Regional Returnee Monitoring Report: South-West Region, October 2002-March 2003, Kandahar, April 2003, p. 10.

[6] Sub-Office Jalalabad. Land Problems. Second Meeting of the Land Task Force, Jalalabad, May 6th, 2002, p. 1

[7] Sub-Office Kabul Returnee Monitoring in Kabul, Kapisa, Logar, Parwan, and Wardak Provinces, Kabul, January 2003

[8] Office of the Chief of Mission in Kabul. Facilitated Group Return, Kabul, April 2003, p. 1.

[9] These refugees never owned land prior to their displacement and as a result do not have land to go back to. This is the case of 200 families who are Tajiks are currently living in Karachi. They have expressed their wish to go to Sayab in Bangi in Baghlan. Another case concerns a group of 85 families of Pashtoon from Shati Pata in Khan Abad district in Kunduz province. Another 60 families of the same group are said to be living in Mianwali and Jalalala refugee camps. Despite improved security, they indicated that

of land in their areas of origin; the current occupation of their land and property by commanders[10]; and their desire for more land[11].

C. Land: A Limited Source of Income

Given the growth of families in exile, the available land is no longer sufficient to cover the needs of its owners. In Dara I Suf, Hazara interviewees told UNHCR that the original 2 families that had fled Afghanistan have multiplied into four in exile As such, the land which was adequate for farming for two family members thirty years ago is insufficient to cover the needs of additional members who have returned as the land is too small to yield enough harvest for all[12]. This is a general trend throughout the country, and has been exacerbated by the severe drought that has persisted for the last four years.

As, such, even those returnees who have had no problems in recovering their property, have been forced to selling it in order to support their families. This has been the case of the returnees in Balkh. Many had to resetll their land prior to displacement, and are now working as laborers on the land of others to support their family[13]. This was particularly the case in Bamyan Province, where many Hazara families sold their lands to pay the Taliban authorities the sum of money required as a substitute for the military recruitment of their family members. Other villages have resorted to sending their heads of families to the urban centers, and neighboring countries to work. In Shinkay village of Gilan district, Ghazni province, the villages rely entirely on the remittances that the men bring home[14].

These combined factors have partially been responsible for the continued cultivation of poppy, which continues to constitute the main source of income for agricultural landowners in many parts of the region, as well as generating employment opportunities for the landless.[15].

D. Displacement Upon Return

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their obstacle to return had been their land, as they claim that some of the Hazaras have occupied 120 jeribs of their land in the last 10 years.

[10] Sub-office Kabul was informed that many refugees are trying to return to Nawabad village of Kohistan II district. They had attempted to return in Summer 2002, but due to the occupation of commanders, they are still in Pakistan. Around 130 houses and 1300 jeribs of land owned by refugees in Pakistan are still occupied by armed commanders who went into the village in 1998 from the neighbouring district of Kohband

[11] There are also groups that do have land, but who see their return as an opportunity to gain more land. This is connected to the strong rumors that had been floating quite strongly among the refugee communities, that the Afghan government will be allocating land to refugees, which has certainly not been confirmed by the Afghan government. Among this category, feature the 1,008 shiite Hazara families who are originally from the North (Baghlan and Ghazni). They live now in New Bassu Camp in Kuram Agency. This group claimed to be landless and that they had nothing left in Afghanistan. It later however became evident that they did indeed own land but that their houses had been destroyed. Instead of requesting the international community and the authorities to assist them in rebuilding their houses, they have requested the authorities to build houses close to Puli Khumri. The group from Baghlan now expressed their wish not to go back to their areas of origin in the villages but to be allocated land as a community.

[12] Sub-Office Mazar, Returnee Area Monitoring Report, Baghlan, Samangan provinces, 2002, p. 12.

[13] Sub-Office Mazar, Returnee Area Monitoring Report: Balkh province, mission of January 22, 23, 2003.

[14] Field Office Ghazni, Protection Monitoring in Gilan District, June 18th-June 20, 2003, p. 2.

[15] Office of the Chief of Mission in Kabul. UNHCR Returnee Monitoring Report, Afghanistan Repatriation, January 2003-March 2003, Kabul, April 2003, p. 16.

A substantial number of refugees have also been subsequently displaced upon return, as a result of land tenure problems in their areas of origin, calling into question the sustainability of return for many of them. Though the majority of the people constituting the "squatters" in Kabul are urban poor[16], some of them are also returnees who have become displaced upon return because their land has been occupied while they were in exile, and who were unable to reclaim it. One such example can be found in sub-district 3 of Kabul province, where 153 families live at the building of the Chaplq shoe factory. They are originally from various provinces such as Parwan, Logar, Kunduz, Kabul and Bamyan. They claim that their land in their areas of origin is still occupied by families of Hazara ethnicity. There were also 60-70 families from the same province and with the same problem residing in several partially destroyed houses in Karte Se[17].

Along the same lines, in sub-district 8 and 10 of Kabul City, a number of Hazara families from Sharistan, have claimed that persons affiliated to two major commanders Toran Abdiul Ali and Arif Dawari had occupied their houses and land[18]. In a third case, 10 Pashtoon IDP families residing in rental houses in Qalacha area of sub-district 8 claim to have come to Kabul when their village became the frontline between the Taliban and the Northern Alliance about 6 years ago. Later on, when the Taliban were defeated, the Pashayee commanders took control of the area and continue to occupy it.

The same holds true for IDPs returning to their areas of origin. In the Eastern region, 89 Gujur families had returned from Hesar Shahi camp to Baghlan in January 2003. Unfortunately, 86 families did not return to their village of origin of Qalai Murad in Dahane Gure district, and opted to live in Dari Larkhab, and Piazqul villages of Doshi district. The reason being that they have no property, and that the houses they used to live in, had been occupied by members of the Tajik minority, who claim to be the rightful owners.

Land problems continue to generate new displacement. In the North, 62 families were reportedly displaced from Chagatak village in Almar district in Maimana. The commanders there had reportedly looted their houses and property, and occupied their houses. Similarly, 160 families were displaced from the village of Jalaier district of Khuja Namusa district. After the Taliban regime fell, a commander attacked their houses and all their property was looted.

Though a large proportion of the population in the urban areas is originally from other areas, that is not to suggest that most of them have been forced to relocate. The majority has chosen to come to the urban areas seeking better employment opportunities. In addition, given that they have spent many years in exile, many have become quite urbanized in Pakistan and Iran, and therefore do not wish to return to their areas. Due to their prolonged stay in exile, many of these refugees have become urbanized and do not therefore wish to move back to their original rural areas. This is for example the case of the refugee group in Basu Camp, who have indicated quite strongly to UNHCR and the Afghan authorities that they do not wish to return to their areas of origin.

E. Occupation of Property while in Exile

Take the example of Gorteepa, a Pashtoon village in Dasti Archi district of Kunduz province, with a small Uzbek minority. Around 5 years ago, the entire population of the village was displaced due to fighting in the district, and many spent several years in Baghi Shirkhat IDP camp. While they were displaced, Uzbeks from the neighboring villages who did not have land

[16] Sub-Office Kabul. "Kabul City Squatters: Draft-In Progress", May 21, 2003, p. 2.
[17] Sub-Office Kabul, Protection update-Central Region, April-May, 2003, Kabul, p. 9.
[18] Sub-Office Kabul, Protection update-Central Region, April-May, 2003, Kabul, p. 10.

moved in and started to cultivate the vacant farmland. When an average number of 60-70 families returned last year to the village, and were only able to get some of the harvest but the bulk of the dispute is still ongoing[19].

The same situation manifested itself in Jowla village of the same province. This area is mainly populated by Hazaras. 15 years ago when the population was displaced, Uzbeks from Eastern Takhar moved into the village and occupied the houses and began to farm the land. In the first half of 2002, the Hazara refugees returned from Pakistan to find that their houses had been occupied by the Uzbeks, who had been living there for a number of years[20].

Finally, in Shomarq settlement in Puli Khumri, Baghlan province, 49 ethnic Ismailia families returned from Karatchi, Pakistan in April 2002. During their exile in Pakistan, a group of 500 IDPs from Nahrin had occupied their property. To date, they have been unable to recover their property despite the fact that they own valid deeds to the lands.

In some cases, these disputes also extend to the harvest of the land, rather than the land itself. For example, in Dasti Archi district of Kunduz province, the entire population of one Pashtun village was displaced to Bagh Shirkat IDP camp in 1997, due to the heavy fighting in the area. Consequently, Uzbeks from neighboring villages moved in and cultivated the farming land that was left vacant. When the Pashtun refugees returned in early 2002, the Uzbeks had already farmed the land, and kept the harvest. Though the Uzbeks eventually gave the Pashtuns a portion of the harvest, the dispute is still ongoing[21].

Conflict over harvest is not limited to group disputes, but features also quite prominently among individuals. Many absentee families had given permission to other families to use their land while they were in exile. Upon return, the rightful owners of the land have experienced problems in recovering it. This was the case in Shirin Tagab district, Faryab province, where Pashtun families claim to have granted local Uzbeks and Aran farmers the permission to use their land and were unable to reclaim a share in the harvest[22].

Exceptions to the rule have occasionally known to exist. In Khoshi district of Logar province and in Bagrami district of Kabul formal written tenant arrangements had been recorded between owners who were still in exile, and the returnees or resident populations[23].

F. Illegal occupation by Commanders

The occupation of houses and property by commanders is one of the most widespread features country wide, affecting groups and individuals alike. Plenty of examples exist in this regard. In Nawabad Kohistan village, Kohistan district of Kabul province, it was reported that 130 houses

[19] Field Office Kunduz, Compiled RM report: Kunduz and Takhar provinces, Kunduz, December 2002, p.9.
[20] Land Task Force for the Northern Region, Draft 1: Protection Issues Related to Land-Examples of reported cases, March 25th, 2003, p.2
[21] Land Task Force for the Northern Region, Draft 1: Protection Issues Related to Land-Examples of reported cases, March 25th, 2003, p.2
[22] Land Task Force for the Northern Region, Draft 1: Protection Issues Related to Land-Examples of reported cases, March 25th, 2003, p.2
[23] Sub-Office Kabul Returnee Monitoring in Kabul, Kapisa, Logar, Parwan, and Wardak Provinces, Kabul, January 2003, p. 21.

and 1200 jeribs of land owned by exiled and displaced Pashtun families were still occupied by armed Pashayi groups[24].

Close affiliation with commanders has often been taken as a pretext by some ethnic groups to occupy the property of others. In Khan Afghania village of Almar village of Faryab district, the farming land in the desert is forcibly occupied by an Uzbek from Kaftar Khan Uzbakia village, who is allegedly linked to the local commander. The occupation of property has also often been accompanied by acts of looting. In other instances, the property was not directly occupied, but its owners were forced by the particular commanders to lease their land to the ethnic group affiliated with them. In the Central region, the returnees complained that they were forced to lease their fruit crop to powerful Tajik neighbours at a minimal price compared to the other offers[25].

Commanders have used their occupation of the land of returnees as a tool to pressurise their victim in order to reach a political end. Weaker members of the society, such as female heads of households are particularly vulnerable to abuse illegal confiscation of their property. In the Istilaf district of Kabul province, the house of a pashtoon widow was unlawfully occupied by a Tajik commander from another village.[26].

This is not to say that vulnerable individuals always lose out to the powerful. In some cases though few, the vulnerables' right to property was effectively protected. In Deh Yak district of Ghazni province; a returnee widow faced difficulties upon return to access her land. The local court investigated the merits and ruled in the widow's favour. The caretaker of her land accepted the decision, signed it in the presence of the villagers and the head of the village.

G. Illegal Levying of Taxes and Extorsions

Extortion and illegal levying of taxes are features that go hand in hand with overall abuse and control that local commanders practice on the village and district level. These abuses do not target necessarily any particular ethnic groups. In the villages of Sangshanda, Tarsang, and Qala Fazelbeg in Guldara district of Parawan province, the local civilians have been subjected to illegal imposition of taxes in the form of farm produce collected by local commanders. In some case, force has been used resulting in physical injuries. Similar incidents were reported in the districts of Daykundi and Sharestan of Uruzgan province, where inhabitants were subjected to forced taxation and looting[27]. In Bamyan province, particularly the districts of Panjab and Warras, it was reported that a number of commanders had coerced the population to feed their soldiers. All civilians, not just political opponents were subjected to this practice. Finally, in some districts in Balk, villagers were charged as much as US$ 32 in order to access potable water[28].

H. Redistribution through Power

The ownership of property, including land has been moved from the hands of one group of owners to another by influential actors in the society (mostly commanders and or local authorities). The new beneficiary group would usually consist of political or ethnic allies. To

[24] Sub-Office Kabul Returnee Monitoring in Kabul, Kapisa, Logar, Parwan, and Wardak Provinces, Kabul January 2003.
[25] Sub-Office Kabul. Protection Update-Central Region, April-May, 2003, Kabul, p.4.
[26] Sub-Office Kabul, Protection Update-Central Region, April-May, 2003, Kabul, p. 4.
[27] Office of the Chief of Mission. First Draft: Final Returnee Monitoring Report Afghanistan: January-December 2002, Kabul, February 2003, p. 18.
[28] Office of the Chief of Mission. First Draft: Final Returnee Monitoring Report Afghanistan: January-December 2002, Kabul, February 2003, p. 18.

mention an example, 30 ethnic Hazara families claim that they had been distributed land in Chasme Sher village, Puli Khumri district of Baghlan. As a result of persecution at the hand of the Talibans, they subsequently fled the country. They returned in October 2002 to find their homes taken over by Pashtuns from neighbouring villages. The Pashtuns on the other hand, claim that they had been awarded this land during the times of King Zaher Shah's rule. The ethnic Hazara communities do not have documentation pertaining to ownership and are hosted by their relatives.

A very similar situation took place in Kandahar, where a group of Hazara returnees claimed to have received land in Hazarajoft and Nad Ali districts of Helmand under a government scheme during Kind Zahir Shah's rule. Their land were expropriated following their expulsion during Jihad, and passed through a number of owners. It is currently controlled by the Head of the Hazarajoft District Profile Police[29].

In Faryab province, one of the commanders is well known for expropriating the land of persons not present in the area of all ethnicity and either leasing or selling it to the other civilians. One interviewee stated that Uzbek civilians had built houses on their land and that it was taken by this commander. It was redistributed the land to local Uzbeks as means of patronage, but also on the understanding that the commanders would receive a share of the harvest[30]

Similarly, and along the same lines, groups or individuals that are allied or were perceived to be allied with opponents and adversaries were denied access to land, or were punished by having land confiscated from them. To give an example, in Faryab province, a Pashtun landowner may have sold his land during the Pahlawan regime, without registering the sale, and then returned when the Taliban were in power and claimed that he had been forced to sell his land, or had not received the money. His claim would be generally supported by the new regime, keen to reverse what it saw as the injustice of the previous regime, and also to gain support from the local constituency.[31].

Discrimination towards members of the minority tribes is not only restricted to land, but also extends to other related crucial issues such as access to irrigation water. In Nawa-I-Barakzai district of Helmand, manipulation of the existing water distribution system (making canal water available to different land owners for a specific number of hours every day) by the majority Barakzais, has affected the agricultural output of landowners belonging to the minority groups (mainly Noorzai tribesmen). The practice was not addressed by the District's Administration, despite the continuous complaints by affected landowners.[32]

I. Difficulty in Recovering Property

The process of recovery has been complicated by the fact that the illegal occupants have often sold the property that they had occupied to others. In Qysiar district of Faryab province, a land dispute between one Pashtun returnee and an Uzbek villager had occurred. The returnee claimed that he had bought the land from an Uzbek around 50 years ago. While he was in exile, around 7

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[29] Sub-Office Kandahar. Regional Returnee Monitoring Report: South-West Region, October 2002-March 2003, Kandahar, April 2003, p. 10.

[30] Sub-Office Mazar Sherif, Mission Report, Faryab, Nov.26th to Dec.3rd, 2002, Mazar Sherif, December 2002, p.5.

[31] Sub-Office Mazar Sherif, Mission Report: Faryab, Nov 26th to Dec.3rd, 2002 Mazar Sherif, December 2002, p. 1.

[32] Office of the Chief of Mission, Final Returnee Monitoring Report, Draft No. 1, Afghanistan, January 2002-March 2003, Kabul, April 2003, p. 21.

years ago, his land was occupied by an Uzbek commander, who then supported the family of the original Uzbek owner to re-sell it to another Uzbek commander, Ghani Pahlawan. When the Taliban took control, the Pashtun owner reoccupied his land. The sons of the Uzbek villager are now claiming that as their father paid for it, they are entitled to a share of the harvest from the land during the Taliban period[33].

There are also more complicated cases of members of ethnic and religious minorities who forcibly sold their lands/property during the Mujahideen or Taliban regimes, and who now wish to recover their properties. Their only legal claim is that they had been coerced to sell their land at the time, which would be difficult to prove. For example, members of the Hindu minority group in the provincial capital of Helmand, Lashkarhga claim that they were forced to sell their shops in the main Lashkargha bazaar to Mujahideen commanders prior to their expulsion from the area. These groups are currently trying to recover their property, although most of them do not hold documents evidencing their title. Their cases are currently pending with both the District Shura and the district.

Other complications concern the questionable way in which those who currently perceive themselves to be the victims of an unlawful act acquired this land in the first place. Many of these groups were given land by previous regimes, without possibly much consideration for legality. In Sayadabad district of Mazar province for example, the land of a group of IDPs currently in Shibergan district is currently occupied by a group of powerful Arab commanders. Though a local ad hoc property commission was established by the authorities, the resolution of the conflict is made more difficult by the fact that these IDPs had been granted the land illegally during the times of Nadir Shah[34].

Though exceptional, there have been cases where returnees have been able to recover their property without problems. Generally, this has been the case in those areas where returnees belong to the same ethnic or tribal group as the majority of the residents, or are supporters of the same political party or commander. In the areas of Gurkab Afgania in Suzmaqala and Abkhour in Gusfandee, Saripul province, the returnees who have recently returned had all recovered their property smoothly and no disputes had been reported[35]. A similar situation was reported in Jawzjan province. Since the whole population of the district is from one ethnicity, no land dispute has been heard of or reported, and returnees have been able to recover their land[36]. Furthermore, none of the returnees interviewed in Faryab province and Balkh province[37] claimed that they had any problems reclaiming their land upon return from displacement.

That is not to say however that no such disputes were found among members of the same tribe or ethnic group. In September 2002, UNAMA and UNHCR Jalalabad received reports that around 600 houses had been burnt during an inter-tribal conflict that had erupted in the village of Girdi Gaus in Mohamendara district between the Utmanzai and the Sarghani tribes. The conflict

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[33] Sub-Office Mazar, Returnee Area Monitoring Report: Faryab, June 2-3, 2003, Faryab, June 2003, p. 6.

[34] Land Task Force of the Northern Region Draft 1: Northern Region Protection Working Group, Mazar Sherif, March 25,2002, p. 1

[35] Sub-Office Kabul, Returnee Monitoring Report of Burghawayee, Gurkhab Afghania Suzma Wala district of Sari pul province, Kabul, February 2003, p.7.

[36] Sub-Office Mazar Sherif, Qarnas and Nawabad villages, Khamab district, Jawzjan province: March 23-25th, 2003, Mazar Sherif, March 2003, p.6.

[37] Sub-Office Mazar, Final Returnee Area Monitoring Report, Balkh district: Mission of April 6th, 2003, Mazar Sherif, April 2003.

concerned an area that lies South of the main road. Both sides accused the other side of encroaching upon this land unfairly[38].

In other cases, returnees had to pay bribes in order to secure their rights. This has been the case of Nawabad village of Kapisa province, where UNHCR was informed that around 15 returnee families regained control of their land after paying 10,000 afs. (around 250 dollars) to the occupying pashayee commanders.[39]

It is worth mentioning in this regard that military and political figures have sometimes assisted returnee groups to regain their land that had been unlawfully taken from them, which once again highlights the fact that the single determinant factor tipping the balance in these issues is sheer political and military power. In Guldara district of Kabul province for example, only a few houses belonging to Pashtoon returnees are still occupied by Tajiks. The issue has been resolved largely through the intervention of a prominent commander of Shomali, who has assisted the returnees in recovering their property[40].

J. Limited Access to Grazing Land

Accessing grazing land has been especially difficult for members of the Kutchi community, whose way of life has thus been substantially affected. In Besud I and II of Wardak province, Kuchis that have been accused of having affiliations with the Taliban have been hindered from entering the grazing land of Hazarajat. To the customary owners of these pastures, the Hazara, the Kuchi were wrongfully granted these lands in the first instance. This occurred in 1893, following the conquest and depopulation of Hazarajat by Amir Abdur Rahman. Hazara are also concerned that since that time, their Kuchi visitors have systematically exploited the poorer Hazara in their trade relations and forcing them to sell their stock and lands to them. A significant number of farms are today owned by absentee Kuchi landlords throughout Hazarajat[41].

Even though the district authorities have intervened, they have done so by differentiating among the Kuchis who own land in the area and who at the same time have not committed crimes against the Hazaras and those who have. Kuchis who fell under the first category have been allowed to enter. The whole affair was characterized by heaving military confrontations, in which several Kuchis lost their lives. In Kharwar district of Logar province, and during the same period, 200 Kutchi families were prevented from entering with their herds, the grazing land of Nawar district in Ghazni province[42]. The Government is in the process of devising new strategies through which the war over the pastures may be resolved. One adviser has strongly recommended that the only viable way forward is for the disputing parties to be assisted to meet and arrive compromises, in respect of each and every specific pasture[43]". Another proposal currently developed by the judicial commission was to cofidy the successful and positive customary dispute resolution mechanisms into a 44 clause law, and then use that law also for the solution of land problems. The same proposal envisages the establishment of 'peace-keeping" jirgas that would be

[38] Sub-Office Jalalabad. Land Problems in the Context of Sustainable Repatriation in the Eastern Region, Jalalabad, April 18, 2003, p. 5.

[39] Sub-Office Kabul, Update of the Central Region, April-May 2003, Kabul, May 2003, p. 5.

[40] Sub-Office Kabul, Update of the Central Region, April-May 2003, Kabul, May 2003, p. 5.

[41] Documentation on this situation in especially Panjab District is provided in the forthcoming document by Liz Wiley for AREU entitled A Review of Land Relations on the Ground: The Case of Bamyan Province.

[42] Sub-Office Kabul. Returnee Monitoring in Kabul, Kapisa, Logar, Parwan, and Wardak Provinces, Kabul, January 2003.

[43] Refer Liz Alden Wily 'Seeking Peace on the Pasture' July 2003.